

**BEFORE THE MAHARASHTRA REAL ESTATE
APPELLATE TRIBUNAL MUMBAI**

Appeal No. AT005000000144253 of 2023

IN

Complaint No. CC005000000023435

- 1. Mr. Nitish Kumar Patel**]
2. Mrs. Ellen Patel]
R/at 17, Whitehorse Lane, South]
Norwood, London, SE25 6RD.] **... Appellants**

Versus

- 1. M/s. Garnet Construction Private Limited**]
Incorporated and registered under]
Companies Act 1965 having its]
Registered office address at]
17 Milap Apartment,]
S.V. Road, Malad (West),]
Mumbai – 400064.]
And also having address at: 501/531,]
Laxmi Mall, Laxmi Industrial Estate,]
New Link Road, Andheri West,]
Mumbai - 400053.]
- 2. Mr. Kishankumar Jugalkishore Kedia, Managing Director**]
Kedia Bungalow, S.V. Road,]
Malad (West), Mumbai – 400064.]
- 3. Mr. Arun Kishankumar Kedia, The Director**]
Kedia Bungalow, S.V. Road,]
Malad (West), Mumbai – 400064.] **... Respondents**

ALONGWITH

Appeal No. AT005000000144254 of 2023

IN

Complaint No. CC005000000023438

- 1. Mrs. Lilavati Arunbhai Patel**]
R/at 17, Whitehorse Lane, South]
Norwood, London, SE25 6RD.] **... Appellant**

Versus

- | | | |
|---|---|------------------------|
| 1. M/s. Garnet Construction Private Limited |] | |
| |] | |
| Incorporated and registered under |] | |
| Companies Act 1965 having its |] | |
| Registered office address at |] | |
| 17 Milap Apartment, |] | |
| S.V. Road, Malad (West), |] | |
| Mumbai – 400064. |] | |
| And also having address at: 501/531, |] | |
| Laxmi Mall, Laxmi Industrial Estate, |] | |
| New Link Road, Andheri West, |] | |
| Mumbai - 400053. |] | |
| 2. Mr. Kishankumar Jugalkishore Kedia, Managing Director |] | |
| |] | |
| Kedia Bungalow, S.V. Road, |] | |
| Malad (West), Mumbai – 400064. |] | |
| 3. Mr. Arun Kishankumar Kedia, The Director |] | |
| |] | |
| Kedia Bungalow, S.V. Road, |] | |
| Malad (West), Mumbai – 400064. |] | ... Respondents |

ALONGWITH

Appeal No. AT005000000144255 of 2023**IN****Complaint No. CC005000000023439**

- | | | |
|-------------------------------------|---|-----------------------|
| 1. Mr. Hiralal Lalji Patel |] | |
| 2. Mrs. Kanbai Hiralal Patel |] | |
| Both residing at 7, Ilmington Road, |] | |
| Kenton, Harrow, Middlesex, HA3 0NQ. |] | ... Appellants |

Versus

- | | |
|--|---|
| 1. M/s. Garnet Construction Private Limited |] |
| |] |
| Incorporated and registered under |] |
| Companies Act 1965 having its |] |
| Registered office address at |] |
| 17 Milap Apartment, |] |
| S.V. Road, Malad (West), |] |
| Mumbai – 400064. |] |
| And also having address at: 501/531, |] |
| Laxmi Mall, Laxmi Industrial Estate, |] |



- New Link Road, Andheri West,]
Mumbai - 400053.]
2. **Mr. Kishankumar Jugalkishore**]
Kedia, Managing Director]
Kedia Bungalow, S.V. Road,]
Malad (West), Mumbai – 400064.]
3. **Mr. Arun Kishankumar Kedia,**]
The Director]
Kedia Bungalow, S.V. Road,]
Malad (West), Mumbai – 400064.] ... Respondents

ALONGWITH

Appeal No. AT005000000144264 of 2023

IN

Complaint No. CC005000000023441

1. **Mr. Vasant D. Sanghani**]
2. **Mrs. Usha V. Sanghani**]
Both residing at 7, P.O. Box No. 11329]
Code – 00400, Nairobi, Kenya.] ... Appellants

Versus

1. **M/s Garnet Construction Private**]
Limited]
Incorporated and registered under]
Companies Act 1965 having its]
Registered office address at]
17 Milap Apartment,]
S.V. Road, Malad (West),]
Mumbai – 400064.]
And also having address at: 501/531,]
Laxmi Mall, Laxmi Industrial Estate,]
New Link Road, Andheri West,]
Mumbai - 400053.]
2. **Mr. Kishankumar Jugalkishore**]
Kedia, Managing Director]
Kedia Bungalow, S.V. Road,]
Malad (West), Mumbai – 400064.]
3. **Mr. Arun Kishankumar Kedia,**]
The Director]



Kedia Bungalow, S.V. Road,
Malad (West), Mumbai – 400064.

]] ... Respondents

Adv. Daljeet Singh Bhatia for Appellants

Adv. Bishwajeet Mukherjee for Respondents

**CORAM : SHRI SHRIRAM R. JAGTAP, MEMBER (J), &
DR. RAJAGOPAL DEVARA, MEMBER (A)**

RESERVED ON : 13th MARCH 2026

PRONOUNCED ON : 27th MARCH 2026

(THROUGH VIDEO CONFERENCE)

JUDGMENT

[PER : DR. RAJAGOPAL DEVARA, MEMBER (A)]

1. Being aggrieved with the impugned order dated 22.11.2022 passed by the learned Chairperson, Maharashtra Real Estate Regulatory Authority (for short "the learned Authority"), in complaints filed by the Allottees, wherein the learned Authority allowed all the Allottees to withdraw from the said project but respondents are directed to refund the amount paid by the Allottees together with interest from 01.12.2017 at the rate as prescribed under Rule 18 of RERA till the amounts are realized. The Allottees have preferred instant appeals and assailed the impugned order on the grounds enumerated in the memorandum of appeals.
2. For the sake of convenience, "Appellants" will hereinafter be referred to as "Allottees", and "Respondents", will hereinafter be referred to as the "Promoters".



3. The brief facts culled out from the pleadings of the parties, impugned order and material on record revealed that the Allottees having relied on the representation made by the Respondents have booked bungalows in "Crystal Springs Residences" situated at land bearing No. 302 and 292 admeasuring about 73876 Sq. Mtrs. lying and situated at Village Karla, Tal. Maval, Dist. Pune. For the sake of convenience, the following table gives the primary details of all the Allottees.

Name of Allottees	1. Mr. Nitish Kumar Patel 2. Mrs. Ellen Patel	1. Lilavati Arunbhai Patel	1. Hiralal Lalji Patel 2. Mrs. Kanbai Hiralal Patel	1. Vasant D. Sanghani 2. Mrs. Usha V. Sanghani
Bungalow Nos. & Areas	11 & 2907.68 Sq. Ft.	12 & 2636.86 Sq. Ft.	44 & 2781.20 Sq. Ft.	15 & 2809.19 Sq. Ft.
Consideration Amounts	₹29,30,738/-	₹29,30,738/-	₹32,06,178/-	₹32,00,000/-
Agreements for Sale	11.07.2006	13.09.2006	08.03.2007	22.11.2006
Registered Agreements for sale	-	-	10.06.2011	08.04.2011
Dates of Possession	31.10.2007	31.12.2007	31.12.2007	31.12.2007

4. It is evident from above table that the Allottees have paid consideration amounts and executed agreement for sale on different dates in the year 2006 wherein the dates of possession are mentioned as 31.10.2007 in one case and 31.12.2007 in rest of the

cases. It is pertinent to note that the agreements for sale recorded that the Respondents shall refund the entire amount along with interest in case they failed to hand over the possession for any reason whatsoever, on the agreed date. Admittedly, the Respondents have failed to hand over the possession of said property as there is a status quo order passed by the Hon'ble Supreme Court in July 2016, and hence the delay was due to circumstances beyond their control. Being aggrieved by delay in delivery of possession the Allottees have sought refund of the entire amount along with interest under Section 18 of RERA Act, 2016. The Appellants submitted that the agreement for sale has clear provision to hand over the possession on or before 31 Oct 2007 / 31 Dec 2007, with no grace period. It also provided for such contingencies wherein the Promoter is unable to hand over the possession due to circumstances beyond his control. The relevant clause also states that even for the causes beyond the control of the Promoter, he shall be liable to refund the entire amount along with interest at the rate of 9% per annum. Section 8 (b) of MOFA and Section 18 (1)(b) of RERA also provided for refund for delay in handing over the possession by the Promoter for the reasons beyond his control. The Appellant further submitted that the Hon'ble Supreme Court in various cases have laid down the principal of law that the home



buyers cannot be made to wait endlessly for the possession of the flat (***Kolkata West International City Pvt. Ltd. Versus Devasis Rudra, Civil Appeal No. 3182 of 2019***). The Hon'ble Supreme Court in the case of ***Fortune Infrastructure (now known as M/s. Hicon Infrastructure) & Anr. Versus Trevor D'Lima & Ors. reported in (2018)*** also considered the situation where there is no date of delivery mentioned by the developer and held as under.

"moreover a person cannot be made to wait indefinitely for the possession of the flat allotted to them and they are entitled to seek refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of the case, a time period of three years would have been reasonable for completion of contract i.e. possession was required to be given by last quarter of 2014."

5. The Appellants further submitted that the learned Authority partly allowed the complaints and held that there is delay in handing over the possession of the Bungalows by the Respondents and hence there is a clear violation of Section 18 of the Act and directed the Respondents to refund the entire amounts. However, the learned Authority wrongly concluded that the date of possession mentioned in the unregistered agreement for sale cannot be relied upon in the absence of a specific date of possession in the registered agreement and thus refused to grant the interest to the Appellants from the date



of the payments made to Respondents instead directed the Respondents to pay interest from 01.12.2017 as the Respondents on the MahaRERA project registration webpage mentioned the proposed date of completion of project as on 30.11.2017. The learned Authority on its own came to this conclusion which is not only contrary to Section 18 of the Act but also directly in contravention of various judgments passed by the Hon'ble Supreme Court and Hon'ble Bombay High Court.

6. The Appellants further submitted that the Hon'ble Supreme Court considered the effect of registration of project under the Act and the date of possession mentioned on the RERA webpage in the case of ***M/s. Imperia Structures Ltd. & ors. Vs. Anil Patil & ors. (reported in MANU/SC/0811/2020)*** and held that for the purposes of Section 18, the period has to be reckoned in terms of the agreement and not the registration. Thus, the date mentioned on the RERA webpage for completion of project is not at all relevant even to calculate interest. The relevant portion of the said Judgement reads as under:

"We may now consider the effect of the registration of the Project under the RERA Act. In the present case the apartments were booked by the Complainants in 2011-2012 and the Builder Buyer Agreements were entered into in November, 2013. As promised, the construction should have been completed in 42 months. The period had expired well before the Project was registered under the provisions of the RERA Act. Merely because the registration under the RERA Act is valid till 31.12.2020 allottees to maintain an action stands deferred. It does not mean that the entitlement of the



concerned relevant to note that even for the purposes of Section 18, the period has to be reckoned in terms of the agreement and not the registration. Condition no. (x) of the letter dated 17.11.2017 also entitles an allottee in same fashion. Therefore, the entitlement of the Complainants must be considered in the light of the terms of the Builder Buyer Agreements and was rightly dealt with by the Commission."

7. The Appellants further relied on the judgment of the Hon'ble Bombay High Court in case of **Neel Kamal Realtors Suburban Put. Ltd. & anr. Vs. Union of India & ors.** wherein it is made clear that the date of delivery of the flat to the allottee has to be taken as stipulated in the agreement for sale and not as per the date of the completion of the project mentioned by the Promoter on MahaRERA project registration webpage.
8. Considering the Section 18, 2(c), 2(d) and other relevant provisions of the Act and various judgments of Hon'ble Supreme Court and Hon'ble Bombay High Court, the impugned order passed by the learned Authority rejecting the interest from the date of payments or agreed date of possession is incorrect/erroneous in law and thus, deserves to be set aside and the Respondents be directed to refund the entire amount along with interest from the date of payment of such amount till its realization.
9. Per contra, the Respondents submitted that they have already finished the construction of the said project but are unable to provide possession of the bungalows to the Appellants because of the stay to



the said project granted by Hon'ble Apex Court. It is further submitted that the Allottee evenafter getting timely updates about the litigation in various courts of law, the Appellant to profit out of the difficulties faced by the Promoter, initiated consumer complaint before the State Consumer Redressal Commission.

10. The Respondents further submitted that the Appellants/Allotees had invested in the project entirely for commercial purposes as the Allotees were not residing in India. They wanted to use the said Bungalows for commercial purposes more specifically for renting out it would fetch them more than 10% analyse returns on the value of the said Bungalows. The Respondent further submitted that they have always informed the Appellant about ongoing litigations on the said project and the same is evident from the clause 5-C of the agreement for sale entered into by the Respondents and the Appellants. Therefore, the Appellants were aware about the ongoing litigations from the beginning and still decided to invest in the said project evenafter, knowing about the same.
11. Learned Advocate Daljeet Singh Bhatia placed his reliance on the following judgments:
 1. Newtech Promoters and Developers Pvt. Ltd. Vs. State of U.P. and Ors. reported in MANU/SC/1056/2021.
 2. Fortune Infrastructure (now known as M/s. Hicon Infrastructure) & Anr. Vs. Trevor D'Lima & Ors. reported in (2018) 5 SCC 442.



3. M/s. Imperia Structures Ltd. & Ors. Vs. Anil Patil & Ors. reported in MANU/SC/0811/2020.
 4. Bangalore Development Authority Vs. Syndicate Bank reported in (2007) 6 SCC 711.
 5. Mr. Jervis Anthony Creado & Anr. Vs. Aishwarya Light Construction Company (Appeal No. AT006000000052415 in Complaint No. CC006000000141152).
 6. Mr. Nayan Nansaheb Gandhi Vs. M/s. Kolte Patil Real Estate Pvt. Ltd. & Ors. (Appeal No. AT006000000010496).
 7. Manjit Singh Dhaliwal V/s. JVPD Properties Pvt. Ltd. (Appeal No. AT006000000000017 & Ors.)
 8. Pioneer Urban Land & Infrastructure Ltd. Vs. Govindan Raghvan & Ors. reported in (2019) 5 SCC 725.
12. We have heard arguments of Advocate Daljeet Singh Bhatia for Appellants and Advocate Bishwajeet Mukherjee for Respondents. The submissions advanced by the learned counsel appearing for respective parties are nothing but reiteration of the contents of complaints, affidavit in reply, appeal memo and written submissions.
13. After considering the submissions advanced by the learned counsel appearing for respective parties, pleadings of the parties, impugned order and material placed on record, the following points arise for our determination, and we have recorded our findings thereupon for the reasons to follow:



Sr. Nos.	Points	Findings
1.	Whether the impugned order dated 22.11.2022, passed by the learned Chairperson, MahaRERA, in the complaints filed by the Allottees/Appellants, warrants interference in the captioned appeals?	In the affirmative
2.	Whether the Allottees/Complainants are entitled to reliefs sought in the complaints?	Partly affirmative
3.	What Order?	As per final Order

REASONS

14. On ensemble of pleadings of the parties as above and material produced on record by the parties revealed that the Allottees have booked bungalows in the project named as "Crystal Springs Residences" and executed agreements for sale wherein possession dates are mentioned as 31st October, 2007 / 31st December, 2007. It is the case of the Allottees that they have paid the entire consideration amount at the time of agreements for sale.
15. The material on record clearly revealed that the entire controversy in the captioned appeals relates to the provisions of Section 18 of RERA Act. The learned Chairman in the impugned order in complaints filed by the Allottees allowed the exit of Allottees from the said project and directed refund of the consideration amount paid by the Allottees along with interest from 01.12.2017. However, the Allottees have prayed for




refund of the amount along with interest from the dates of payment. Section 18 of RERA Act protects the rights of homebuyers and provides relief of interest, refund of amount with interest and compensation to Allottees. If the Promoter fails to hand over the possession of subject flats/bungalows by specified date, Section 18 of RERA Act entitles Allottees, who wish to exit from the project, to claim refund of amount with interest. It is not in dispute that the Allottees have booked bungalows and paid consideration amount in July/Sep/Nov 2006 and Mar 2007.

16. It is contended by the Respondents that the construction of the said project is completed, but possession of the bungalows could not be given to Appellants on account of stay granted by the Hon'ble Apex Court and pending litigations in various courts of law and with the Revenue Department in Government of Maharashtra, the Appellants tried to make profit out of the difficulties faced by the Promoters by initiating legal proceedings against the Promoters. We do not find merit in the contentions of the Respondents. The contention of the Promoters is that due to the pending cases and stay granted by the Hon'ble Apex Court, the Promoters could not complete the project, and Allottees were given timely updates about the litigation in various courts of law. Therefore, the Allottees cannot claim interest of refund of the amount. Section 8 of MOFA Act speaks about refund of the



amount paid with interest for failure to give possession within specified time or further time allowed. Section 8 of MOFA lays down that "*if (a) the promoter fails to give possession in accordance with the terms of his agreement of a flat duly completed by the date specified, or any further date or dates agreed to by the parties, or*" "*(b) the promoter, for reasons beyond his control and of his agents, is unable to give possession of the flat by the date specified, or the further agreed date and a period of three months thereafter, or a further period of three months if those reasons still exist, then, in any such case, the promoter shall be liable on demand to refund the amounts already received by him in respect of the flat with simple interest*". In the instant case even after 18 years the promoters were not able to hand over the possession of the subject bungalows to allottees.

17. We are of the view that the due date of handing over possession of the bungalows is fixed by the Promoters after ascertaining all favorable and unfavorable circumstances for completing construction of the project and obtaining Occupation Certificate. So, the Promoters are required to fix due date in anticipation of any such adverse circumstances to complete the project. The Promoters having sufficient experience in the real estate market are expected to be prepared before hand to deal with such eventualities, but also act professionally by assessing the time by which the Promoters after overcoming the



likely mitigating factors, would be able to complete the project and give possession. The Promoters accordingly have to mention reasonable date of possession while executing the agreements for sale. In our considered view, it is the Promoters who had the ability to assess the likely date of completion of the subject project considering all likely factors that could delay the completion of the project. Considering the liability of the promoters in the present case, it is made clear that Allottees have very limited liability of discharging their own obligations as per terms of agreements for sale *inter alia* relating to primarily making payments from time to time so that the project is not starved of funds to cause delay in completion of the project. The Allottees can be held responsible only if they failed to discharge their obligations as per the agreements for sale. In the instant case, the reasons for delay in completion of the project are not attributable to the Allottees and they cannot be penalised for external factors affecting timely project completion. Therefore, if the Allottees are not responsible for delay in completion of the project, they are entitled to get relief under Section 18 of RERA Act and cannot be saddled with consequences for delay in completing the project.

18. Section 18 of RERA Act spells out consequences if the promoter fails to complete or is unable to give possession of flat or apartment either in terms of agreement for sale or to complete the project by the date



specified therein on account of discontinuance of his business as a developer on account of suspension or revocation of registration or for any other reason, the allottee/ home buyer holds unqualified right to seek interest on the paid amount by him at such rate as may be prescribed in this behalf or to seek refund of amount with interest if he wishes to withdraw from the project. It is now settled law that if delay is not attributable to the allottees/ home buyers, they are entitled to claim relief provided under Section 18 of RERA Act. It has been observed by the Hon'ble Supreme Court in a case of

M/s. Imperia Structures Ltd. Vs. Anil Patni & Ors. [in Civil Appeal No. 3581-3590 of 2020] that-

"In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the Promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the Project. Such right of an allottee is specifically made "without prejudice to any other remedy available to him". The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. The proviso to Section 18(1) contemplates a situation where the allottee does not intend to withdraw from the Project. In that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is upto the allottee to proceed either under Section 18(1) or under proviso to Section 18(1)."



19. It is not the case of Promoters that the Allottees in any way caused delay in handing over the possession. While explaining scope of section 18 of RERA Act 2016 the Hon'ble Supreme Court in a case of **M/s Newtech Promoter and Developers Pvt. Ltd. V/s. State of Uttar Pradesh** [2021 SCC Online 1044] dated 11 November, 2021 Civil Appeal Nos. 5745, 6749 and 6750 to 6757 of 2021]- has held in para 25 as under:

*"Para 25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, **which is in either way not attributable to the allottee/home buyer**, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.*

20. It is further contended by the Respondents that the allottees had invested in the project for commercial purposes i.e. for renting out so that it would fetch good financial returns as they were not residing in



India. The Respondents further invoked Clause 5-C of the agreements for sale wherein ongoing litigations on the said project are mentioned. So, the Allottees are aware of the litigations from the beginning and still decided to invest even after knowing about the same. We do not find merit in the contention of the Respondents. The contractual clauses in the agreements for sale invoked by the Respondents cannot override the statutory rights of the allottees. Further, the Allottees awareness of ongoing litigation does not amount to waiver of the rights under RERA Act, 2016.

21. On examination of impugned order revealed that the learned Authority has arrived at conclusion that the Promoters have failed to handover possession of the subject bungalows to Allottees as per the terms of the agreements for sale. The learned Authority has allowed the captioned complaints and directed the Respondents to refund the amounts paid by Allottees together with interest from 01.12.2017 at the rate as prescribed under Rule 18 of RERA Act, 2016 till the amounts are realized. It is pertinent to note that the Respondents have not filed appeal against the impugned order. It means the Respondents have accepted the impugned order. This signifies that the Respondents have accepted that there is delay in handing over possession of the subject bungalows to Allottees as a result thereof they are liable to refund the amount paid by Allottees together with interest as per provisions of



Law. The learned Authority instead of awarding interest from the date of payments awarded interest from 1.12.2017 which is against the provisions of RERA Act, 2016. Section 2 (za) of RERA Act, 2016 defines interest:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation.—For the purpose of this clause—

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"

It means the interest payable by the Promoters to the Allottees shall be from the date the Promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded. The learned Authority has miserably failed to consider this provision and wrongly awarded interest from 01.12.2017. Therefore, we are of the considered view that the impugned order warrants interference in the captioned appeals to the extent of date of payment of interest. As a result, thereof the impugned order requires to be modified to that extent only. We, therefore, answer Point Nos.1 to 3 accordingly. Consequently, we proceed to pass following order.



ORDER

1. Appeal Nos. AT005000000144253 of 2023, AT005000000144254 of 2023, AT005000000144255 of 2023 and AT005000000144264 of 2023 are allowed.
2. The impugned order dated 22.11.2022 is modified as under.
3. The Respondents/Promoters are directed to refund the entire paid consideration amount to Appellants/Allottees with interest as per State Bank of India's Marginal Cost of Lending Rate (MCLR) + 2% from the dates of payment till realization of the entire amount.
4. The Respondents/Promoters are directed to pay costs of Rs.10,000/- to each of the Appellants/Allottees.
5. Copy of this order be communicated to the learned Authority and respective parties as per section 44(4) of RERA Act 2016.


(DR. RAJAGOPAL DEVARA)

V. K. Shople


(SHRIRAM. R. JAGTAP)